

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Ian H. FRAZER)	Confirmation No: 8451
)	
Application No.: 10/534,130)	Art Unit: 1655
)	
Filed: December 30, 2005)	Examiner: Kimberly Makar

For: A METHOD FOR OPTIMISING GENE EXPRESSION USING
SYNONYMOUS CODON OPTIMISATION

Commissioner for Patents
P.O. Box 1450, **Mail Stop Amendment**
Alexandria, VA 22313-1450

RESPONSE TO RESTRICTION REQUIREMENT

Sir:

This is a response to the Restriction Requirement mailed on April 4, 2007 for the above captioned application. The Commissioner is hereby authorized to charge any fees for filing this response to Deposit Account No. 50-3840.

Applicants elect the claims of Group I, claims 39-65 and 71. This election is made with traverse. Specifically, independent claims 39, 66 and 73-76 should be examined together pursuant to PCT Rules 13.1 and 13.2 because these groups are linked by a special technical feature not taught or suggested by the cited art.

The Examiner asserts that the claimed invention lack novelty because Frazer (WO 00/42215) teaches “methods of making synthetic polynucleotides from which a polypeptide is producible” and the “generation of transgenic organisms with the polynucleotides and methods of modulating phenotypes based on first codon preference” (Office Action, page 2). Applicants respectfully submit that the instant claims are novel in light of Frazer and that the restriction requirement should be withdrawn.

Frazer discloses a phenotype conferred on a cell by a polynucleotide that encodes a phenotype-associated polypeptide where the polypeptide is expressed in that cell. In contrast, the captioned application describes various phenotypes which are conferred on cells in which the polynucleotide is not expressed. Specifically, independent claims 39,

66 and 73-76 recite, in part, "the selected phenotype is other than a phenotype conferred upon a cell by a polynucleotide that is expressed in the cell and that encodes the polypeptide." Accordingly, the special technical feature of the instantly claimed invention is not taught or suggested by the cited and, therefore, at least independent claims 39, 66 and 73-76 should be rejoined for examination on the merits.

Applicants reserve the right to pursue non-elected subject matter in one or more divisional applications. The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application. Examination on the merits is awaited.

Date: November 21, 2007
Patent Administrator
Proskauer Rose LLP
1001 Pennsylvania Avenue, NW
Suite 400, South
Washington, DC 20004
Telephone: 202.416.6800
Facsimile: 202.416.6899

Respectfully submitted,



Paul M. Booth
Attorney for Applicant
Reg. No.: 40,244

Customer No. 61263